APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DATED AND FILED AUGUST 3, 1999

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-2053
Non-Argument Calendar

D. C. Docket No. 98-00763-CV-ORL-19B

NANCY MELLON,

Plaintiff-Appellant,

versus

WILLIAM J. CASSIDY, JR.,

Respondent-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(August 3, 1999)

Before EDMONDSON, BLACK and CARNES, Circuit Judges.

PER CURIAM:

Nancy Mellon, proceeding *pro se*, appeals the dismissal of her civil action filed pursuant to the Administrative

Procedures Act ("APA"), 5 U.S.C. §702. The district court determined correctly that Mellon's taxpayer status (no particularized, personal injury) and her claim of breach of contract (a contract to which she is not a party) were insufficient to attain standing to bring her action. On appeal, Mellon has made other claims about standing — ones based on necessity and her status as a disappointed bidder and a third-party beneficiary to a breached contract — that are raised for the first time on appeal and so are not properly before this Court. We affirm the dismissal.

We deny defendant's motion to dismiss the appeal as moot.

AFFIRMED.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION DATED AND FILED OCTOBER 16, 1998

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO. 98-763-CIV-ORL-19B

NANCY MELLON,

Plaintiff,

v.

WILLIAM J. CASSIDY, JR.,

Defendant.

ORDER

This cause came before the Court on Defendant's Motion with Memorandum in Support to Dismiss Amended Complaint (Doc. No. 14, filed September 28, 1998) and Plaintiff's Response to Defendant's Motion to Dismiss (Doc. No. 16, filed October 13, 1998).

In this action, pro se Plaintiff Nancy Mellon again seeks to enjoin the transfer of all properties known as the Orlando Naval Training Center to the City of Orlando, Florida. Plaintiff's original Complaint was dismissed for lack of

subject matter jurisdiction. Because Plaintiff lacks standing to assert her claims, the Court must also dismiss her Amended Complaint.

Plaintiff asserts two claims. Plaintiff's first claim is that the conveyance of the Naval Training Center is in violation of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 471 et seq.. Plaintiff lacks standing to assert this claim because the United States Supreme Court has held that taxpayers do not have standing to challenge a conveyance of federal property pursuant to this Act. *See Valley Forge Christian College v. Americans United for the Separation of Church and State*, 454 U.S. 464, 473-90 (1982).

In order to have standing, Plaintiff must show that she has suffered an "injury in fact." An "injury in fact" is an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent not conjectural or hypothetical. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (citations omitted). A "particularized injury" is an injury that affects a plaintiff "in a personal and individual way." *See Lujan*, 504 U.S. at 560-61 n.1; *see also Warth v. Seldin*, 422 U.S. 490, 501 (1975).

Plaintiff alleges that the conveyance of government property will affect her tax burden. The United States Supreme Court has held that such an injury is rarely particular enough to confer standing because " 'the interests of a taxpayer in the moneys of the federal treasury are too indeterminable, remote, uncertain, and indirect . . . .' " *See Valley Forge*, 454 U.S. at 478 (quoting *Doremus v. Board*

of Education, 342 U.S. 429, 433-34 (1952)). For this reason, the Supreme Court has limited standing for taxpayers to complaints that allege an unconstitutional exercise of congressional power under the taxing and spending clause of Art. I, § 8 of the Constitution. *See id.* (quoting *Flast v. Cohen*, 392 U.S. 83, 102 (1968)). Since Plaintiff's first claim does not concern an act of Congress under the taxing and spending clause, Plaintiff does not have standing to assert the claim.

Plaintiff's second claim is for breach of contract. The claim is based on an alleged offer to keep the Navy Exchange open after the Orlando Naval Training Center closed. Plaintiff lacks standing on this claim because she fails to show "injury in fact" and because she fails to allege that she was a party to the alleged agreement. *See Pyles v. United Air Lines, Inc.*, 79 F.3d 1046 (11th Cir. 1996) (claim of plaintiff not party to subject agreement dismissed for failure to state a claim).

Accordingly, Defendant's Motion to Dismiss Amended Complaint and Supporting Memorandum of Law (Doc. No. 14, filed September 28, 1998) is **GRANTED**, and Plaintiff's Amended Complaint (Doc. No. 11, filed September 4, 1998) is **DISMISSED WITH PREJUDICE**.

DONE AND ORDERED at Orlando, Florida this 16th day of October, 1998.

s/ Patricia C. Fawsett
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DENYING PETITION FOR REHEARING DATED AND FILED NOVEMBER 17, 1999

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 99-2053

NANCY MELLON,

Plaintiff-Appellant,

versus

WILLIAM J. CASSIDY, JR.,

Defendant-Appellee.

On Appeal from the United States District Court for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC
(Opinion _____, 11th Cir., 19__, __ F.2d __).

Before: EDMONDSON, BLACK and CARNES, Circuit Judges.

PER CURIAM:

The Petition (s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the

Appendix C

Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

s/ [illegible]
UNITED STATES CIRCUIT JUDGE